

REMARKS

Claims 1-6 are pending in the instant application. The Examiner has withdrawn claims 7-19 as being directed to non-elected subject matter. Applicants expressly reserve the right to file divisional applications to the subject matter not currently being pursued.

Applicants have enclosed revised PTO-1449 forms, which correctly lists Christopher Dinsmore as the first named inventor.

RESTRICTION REQUIREMENT

The Examiner has maintained the restriction requirement and has indicated that Claims 1-6, where R^2 is $-N(R^3)_2$ or $-OR^3$ and R^3 is H or C_1-C_{10} alkyl, have been examined. The Examiner has withdrawn Claims 7-19 and the remaining subject matter of Claims 1-6 as being drawn to non-elected subject matter. Applicants have amended Claims 1 and 2 in accordance with the Examiner's restriction requirement and have defined R^2 as $-N(R^3)_2$ or $-OR^3$, and R^3 as H or C_1-C_{10} alkyl. As noted above, Applicants expressly reserve the right to file divisional applications directed to the subject matter not currently being pursued.

OBJECTIONS

The Examiner has objected to Claims 1 and 4. Applicants have made the changes suggested by the Examiner and therefore believe that these objections have been addressed. Applicants respectfully request that these objections be withdrawn.

SECTION 103

The Examiner has indicated that Claims 1-6 are rejected under 35 U.S.C. 103 as allegedly being unpatentable over US Patent 5,527,819 ('819).

Applicants respectfully traverse this rejection. Applicants note that the reference cited by the Examiner, the '819 patent, is directed to inhibitors of HIV reverse transcriptase. The patent is related to an invention that is useful in the prevention or treatment of infection by HIV and the treatment of AIDS. Applicants respectfully assert that the '819 patent is non-analogous

art. According to the CAFC, in *In re Deminski*, 796 F.2d 436 (CAFC 1986), there is a two step process for determining if a reference is non-analogous art. As stated by the *Deminski* Court, 796 F.2d at 441,

First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem with which the inventor was involved.

Applicants respectfully contend that a reference dealing with inhibitors of HIV reverse transcriptase would not be in the field of one with ordinary skill in oncology. Additionally, the treatment of HIV or AIDS would not be reasonably pertinent to an inventor trying to develop compounds for that inhibit tyrosine kinases, such as those used to treat cancer. For these reasons, the '819 patent would be non-analogous art and therefore should not be cited against the instant invention as allegedly rendering the instant invention obvious. One with ordinary skill in the cancer field would not be motivated to modify the HIV compounds of the '819 patent to develop inhibitors of tyrosine kinase. Therefore, Applicants respectfully request that this rejection be withdrawn.

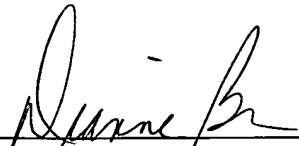
DOUBLE PATENTING

The Examiner has indicated that Claims 1-6 are rejected as allegedly being unpatentable over Claims 1 and 9 of the '819 patent, due to nonstatutory obviousness-type double patenting.

Applicants respectfully traverse this rejection. As noted above, Applicants assert that the '819 patent is non-analogous art and would not render the instant invention obvious. For the reasons given in the above paragraphs, Applicants respectfully request that this rejection be withdrawn.

Applicants respectfully contend that Claims 1-6, as amended, are allowable and an early Notice of Allowance is earnestly solicited. If a telephonic communication with Applicants' representative will aid in the advancement of the prosecution of this application, please telephone the representative indicated below.

Respectfully submitted,

By: 
Dianne Brown
Registration No. 42,068
Attorney for Applicants

MERCK & CO., INC.
P.O. Box 2000 - RY 60-30
Rahway, New Jersey 07065-0907
Telephone No. (732) 594-1249

Date: September 21, 2006

Enclosure – PTO-1449 form